

Remarks

Specification

The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. More specifically, the specification was objected to for failing to state the word “notches” outside of the claims. Paragraph 44 has been amended to specifically include the word notches. Applicant asserts that such an amendment does not constitute new matter. Fig. 14 clearly shows notches. Furthermore, the figures are considered to be part of the specification and may adequately provide support for the claims.

Claims

Indefiniteness

Claims 1-30 were rejected under 35 U.S.C §112 (2) as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner objects to the use of the terms “notches” and “apertures.” The Applicant respectfully notes that while the two terms may be used to describe the same thing, the two terms have differing scopes. Furthermore, the terms are not contrary to each other. Using terms of differing scopes in two different independent claims does not make those claims indefinite. Removal of the rejection is respectfully requested.

Prior Art Rejections

A. US Patent No. 6,279,795

Claims 1, 4, 5, 21, and 22 were rejected under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,279,795 to Pierzina (hereinafter “the ‘795 Patent”). The ‘795 Patent teaches a shoulder strap. The strap includes a body of padding material having a flexible flat strap member embedded therein. A plurality of elongated indentations extend into opposite sides of the padding material and the indentations on one side of the padding material are offset longitudinally with respect to the indentations on the other side of the padding material.

1. Claim 1

Amended claim 1 requires and the ‘795 Patent fails to disclose “a support surface, and a siderail.” The ‘795 Patent provides neither a support surface nor a siderail. Accordingly, claim 1 is believed to be allowable. Such allowance is respectfully requested.

2. Claims 4 and 5

Claims 4 and 5 depend from claim 1. At least for the reasons that claim 1 is believed to be allowable, claims 4 and 5 are also believed to be in condition for allowance. Such allowance is respectfully requested.

3. Claim 21

Amended claim 21 requires and the '795 Patent fails to disclose "a support surface, and a siderail." The '795 Patent provides neither a support surface nor a siderail. Accordingly, claim 21 is believed to be allowable. Such allowance is respectfully requested.

4. Claim 22

Claim 22 depends from claim 21. At least for the reasons that claim 21 is believed to be allowable, claim 22 is also believed to be in condition for allowance. Such allowance is respectfully requested.

B. JP Patent No. 10-266510

Claims 1-3, 5-12, 14, 15, and 19-26 were rejected under 35 U.S.C. §102(b) as being anticipated by Japanese Patent Application No. JP 10-266510 (hereinafter "JP Application"). The JP Application teaches a flexible handrail used in a staircase.

1. Claim 1

Amended claim 1 requires and the JP Application fails to disclose "a support surface, and a siderail." The JP Application provides neither a support surface nor a siderail. Accordingly, claim 1 is believed to be allowable. Such allowance is respectfully requested.

2. Claims 2-3, 5-6, 8-9

Claims 2-3, 5-6, and 8-9 depend from claim 1. At least for the reasons that claim 1 is believed to be allowable, claims 2-3, 5-6, and 8-9 are also believed to be in condition for allowance. Such allowance is respectfully requested.

3. Claim 7

Claim 7 requires and the JP Application fails to disclose "the siderail corridor extending within the flexible body and at least one of the plurality of notches." The proposed central rail member of the JP application does not extend within any of the proposed notches. In fact, it appears that the ambient air is the only material within the proposed notches. Accordingly, the JP application fails to teach all the elements of claim 7. Allowance of claim 7 is respectfully requested.

4. Claim 10

Claim 10 requires and the JP Application fails to disclose "a first set of notches on a first side of the flexible body and a second set of notches on a second side of the flexible

body.” As can be appreciated from the Figures, each proposed notch of the JP Application is circumferential in nature. Therefore, each notch extends around all sides of the flexible body. Furthermore, there is no set of notches that is on a first side, and there is no set of notches that is on a second side. Allowance of claim 10 is respectfully requested.

5. Claim 11

Amended claim 11 requires and the JP Application fails to disclose “a support surface, and a siderail.” The JP Application provides neither a support surface nor a siderail. Accordingly, claim 11 is believed to be allowable. Such allowance is respectfully requested.

6. Claims 12, 14, 19, and 20

Claims 12, 14, 19, and 20 depend from claim 11. At least for the reasons that claim 11 is believed to be allowable, claims 12, 14, 19, and 20 are also believed to be in condition for allowance. Such allowance is respectfully requested.

7. Claim 15

Claim 15 requires and the JP Application fails to disclose “the rail member extending within the central rail member aperture and through at least one of the laterally extending apertures.” The proposed rail member of the JP application does not extend within any of the proposed laterally extending apertures. It appears that the ambient air is the only material within the proposed laterally extending apertures. Accordingly, the JP application fails to teach all the elements of claim 15. Allowance of claim 15 is respectfully requested.

8. Claim 21

Amended claim 21 requires and the JP Application fails to disclose “a support surface, and a siderail.” The JP Application provides neither a support surface nor a siderail. Accordingly, claim 21 is believed to be allowable. Such allowance is respectfully requested.

9. Claims 22-26

Claims 22-26 depend from claim 21. At least for the reasons that claim 21 is believed to be allowable, claims 22-26 are also believed to be in condition for allowance. Such allowance is respectfully requested.

C. US Patent No. 5,875,792

Claims 13 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over the JP Application in view of US Patent No. 5,875,792 to Cambell, Jr. et al. (hereinafter “Campbell”). Campbell describes a bendable foam covered rod-like article and method and apparatus for making same. More specifically, the invention relates to products such as hair curlers, holders for ponytails, and the like. Even more specifically, it is an object of the invention to provide a closed cell foam-covered bendable rod-like article in which the core

ends are safely encapsulated and which retains a strong bond between the flexible core and foam sheath throughout multiple bendings and straightenings.

1. Claim 13

Claim 13 depends from claim 11. At least for the reasons that claim 11 is believed to be allowable, claim 13 is also believed to be in condition for allowance. Such allowance is respectfully requested.

2. Claim 18

The Examiner stated that the JP Application “fails to disclose or fairly suggest the flexible material of the body is made from foam. [Campbell] discloses a bendable foam covered rod-like article.” Applicant respectfully points out that the JP Application describes a handrail, and Campbell describes a hair curler. Not only are the two references non-analogous art, but there is no disclosure or suggestion in either reference that would lead one skilled in the art to combine it with the other. As stated by the Examiner, the JP Application “fails to disclose or fairly suggest the flexible material of the body is made from foam.” Likewise, Campbell fails to teach or suggest that it could be used or combined with a stair handrail. Accordingly, there is no suggestion in the art for the proposed combination.


Final Comments

Applicant notes with appreciation the allowability of claims 27-30. Furthermore, Applicant believes that the indefiniteness rejection has been alleviated in order to place claims 27-30 in condition for allowance.

In the event that an extension of time under 37 C.F.R. § 1.136 is deemed necessary or appropriate for the timely filing of this Request, Applicants hereby petition for such extension of time and hereby authorize charging the large entity fee for such petition to Deposit Account No. 02-3223 with reference to Matter 8266-1126.

Respectfully submitted,

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